

STATEMENT OF CONSIDERATION RELATING TO 911 KAR 2:120
Amended after Comments

(1) A public hearing on 91 KAR 2:120 was held on May 21, 2003 at 9:00 a.m. at the Health Service Auditorium, Cabinet For Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621.

(2) The following people attended this public hearing or submitted written comments:

David Vance	
Steve Shannon	KARP, Inc
Fred Dent	parent
Lisa Murphy	Lifeskills, Inc.
Carl Myers	Psychologist
Mary Simmons	
Sarah Jeffries	
Teresa Karem	Dorman Center
Mike Stickler	parent
Karen Ogle	Baptist Health Care Systems, Central Baptist Hospital
Sandra Milburn	Step One Therapy

(3) The following people from the promulgating administrative body attended this public hearing or responded to the written comments:

Trish Howard	Executive Staff Advisor, Commission for Children with Special Health Care Needs
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Summary of Comments and Responses

(1) Subject Matter: Forty-five (45) day timeframe

(a) Comment: Steve Shannon submitted comments requesting that 911 KAR 2:120 be amended to allow for an extension of the forty-five (45) calendar days if the initial service coordinator has requested records but the records have not been received.

(b) Response: The Cabinet does not have the authority to extend the federally mandated forty-five day timeframe established in 34 CFR 303.321. The administrative regulation will not be amended as a result of this comment.

(2) Subject Matter: Record Review process

(a) Comment: Steve Shannon submitted comments requesting that the administrative regulation include clear timeframes for the completion of the

- record review. He suggested that it be within five (5) workdays.
- (b) Response: Section 1(11)(c)1. of this administrative regulation establishes a timeframe of fourteen (14) calendar days for each level of evaluation to perform its evaluation of the child and provide the ensuing report to the IFSP team. The administrative regulation will not be amended as a result of this comment.
- (3) Subject Matter: Primary Level Evaluation
- (a) Comment: Steve Shannon submitted comments suggesting that whenever possible, the primary evaluator be given the flexibility to recommend and perform (if appropriate and feasible) additional assessments to determine eligibility. He believes this change would expedite the assessment process and allow the primary evaluator, who is already familiar with the child and family, to participate in the eligibility determination process at the second level review. If the primary evaluator fails to determine eligibility through the identification and assessment process then the CSHCN professional staff should conduct the First Steps Record Review.
- (b) Response: The Cabinet believes that this flexibility is provided in Section 2(1)(d)3 if there is one area of concern and the family and initial service coordinator agree that an in-depth assessment is warranted. If the assessment reveals a standardized score that would meet eligibility criteria, the primary evaluation, assessment scores and other documentation identified in Section 1(9)(b) are submitted to the Record Review Team for an eligibility determination. The administrative regulation will not be amended as a result of this comment.
- (c) Comment: Steve Shannon submitted a comment suggesting that, "if qualified, Point of Entry staff be permitted to conduct an evaluation and make an immediate determination of eligibility on the initial visit. If it is not possible to make an eligibility determination at the initial visit, then the First Steps evaluation and eligibility process should be followed. (The Point of Entry reimbursement rate would need to be increased to accommodate the increased duty and responsibility)."
- (d) Response: The Cabinet believes that separating the responsibilities among the various service providers minimizes the possibility of a perception of a conflict of interest. The administrative regulation will not be amended as a result of this comment.
- (e) Comment: Mr. Myers submitted a comment regarding the requirement that a primary level evaluator make suggestions regarding how services may be provided in a natural environment. He states that such a requirement is the purpose of the assessments conducted by those specialists in those areas of need identified by the primary level evaluation and recommends that lines 17 and 18 on page 12 be deleted.
- (f) Response: Essential to the philosophy of Part C of the Individuals with Disabilities Education Act (IDEA) is that, to the maximum extent appropriate, developmental services are provided in natural environment. The Cabinet believes that suggestions by all parties within the process relative to natural

- environments, reinforces that philosophy. The regulation is not being amended as a result of this comment.
- (g) Comment: Mr. Myers commented that the timeframes for the primary level evaluators to schedule an evaluation and have the ensuing report submitted is very difficult to accomplish because of the apparent shortage of primary level evaluators in the rural areas.
 - (h) Response: The administration understands Mr. Myers concerns with these short timeframes; however, the federal regulations governing this program requires that all evaluations, assessments and the initial IFSP meeting be completed within 45 days of the initial referral; therefore, it is necessary to have this requirement in order to comply with the federal mandate. The regulation is not being amended as a result of this comment.
 - (i) Comment: Mr. Stickler stated that there are concerns regarding the provision that if a child is re-referred to First Steps within a certain period of time, that the previous evaluation will be used. He further explained that a six month old child experiences so much during that period and having to wait until the three required months have passed until a new evaluation can be completed and not pressing ahead as quickly as possible with services he believes is a disservice to the child.
 - (j) Response: The administration believes that the regulation as proposed allows for a re-evaluation without regard to the timeframes established in Section 1(4)(a) if there are new concerns that render the previous evaluation no longer valid. If there were no new concerns then the previous evaluation would still be valid. The regulation is not being amended as a result of this comment.
 - (k) Comment: Ms. Milburn requests clarification on what constitutes the criteria for review with both a re-evaluation and another assessment.
 - (l) Response: If the IFSP team determines that a re-evaluation or an assessment is needed in order to meet the developmental needs of the child or family, it would be appropriate to carry out the appropriate process. The regulation is not being amended as a result of this comment.
 - (m) Comment: Ms. Milburn and Nancy Cali request clarification on when a family requests a change in therapists, what criteria are acceptable in approving another assessment.
 - (n) Response: An assessment is warranted if the IFSP team believes that there are concerns that are not being addressed in the current IFSP and that another assessment would provide them with the necessary information in order to determine the services the child or family needs. An assessment due to the therapist's needs (i.e. licensure requirement) shall be billed as a therapeutic intervention in accordance with 911 KAR 2:200, Section 3(3)(c). The regulation is not being amended as a result of this comment.
 - (o) Comment: Marsha Schofield submitted a comment that the current primary level evaluation model does not clearly recognize the importance of evaluating a child's nutrition risk status and does not feel that the current system screens infants/children for nutrition risk as well as it does for other areas of development.

- (p) Response: Due to the fact that nutrition affects development, but is not a developmental skill that a child learns, it is considered a part of the medical component of the evaluation process and not one of the developmental skill areas that are evaluated as part of the developmental evaluation. In addition, although nutrition services are recognized as an early intervention service, they are limited to assessments, developing and monitoring of appropriate plans to address the nutritional needs of children and making referrals to appropriate community resources to carry out nutritional goals. (34 CFR 303.12(d)(7)). Although we do not currently have plans to create a screening tool for physicians to complete, as we revisit some of our forms, we will be glad to have your input with regard to how nutrition should be addressed.
- (4) Subject Matter: Evaluation reports
- (a) Comment: Mr. Myers submitted a question asking who the contact person is that is referenced on page 11, line 17.
- (b) Response: The contact person is referring to someone that could be contacted in case of questions regarding the evaluation report. This would most likely be for Intensive Level Evaluation teams or Record Review team in which there are multiple evaluators. The regulation is not being amended as a result of this comment.
- (c) Comment: Mr. Myers submitted a suggestion to replace the word “documentation” on page 13, line 17, with the “word “statement”.
- (d) Response: The CCSHCN agrees with the suggestion and will amend the regulation accordingly.
- (5) Subject Matter: Screening Tool
- (a) Comment: Steve Shannon submitted a comment suggesting that a cost-containment measure, “the First Steps program develop a screening tool that would assist and help families, concerned professionals and referring agencies in making “appropriate” referrals to the First Steps Program.” Mr. Shannon stated that “a data review may lead to the development of a screening tool which would help divert children to alternative programs and would eliminate the costs of home visits, primary level evaluations, assessments and IFSP meetings for ineligible children or inappropriate referrals.”
- (b) Response: The Cabinet appreciates the comment and is in the process of meeting with professional boards and associations, including the Kentucky Medical Association and the American Academy of Pediatrics to discuss the First Steps Program’s eligibility criteria and services. However, once the Point of Entry receives the referral, the federal regulations do not allow for any process other than the established evaluation and assessment processes; therefore, the administrative regulation will not be amended as a result of this comment.
- (6) Subject Matter: Annual Evaluations
- (a) Comment: Steve Shannon expressed concerns that the annual evaluations

- mandated by 2003 GA Senate Bill 60 must result in scores that meet eligibility requirements in order for a child to continue receiving services. He further states "clearly, children should have continued delays in order to qualify for continued intervention, but using original eligibility guidelines for continued services disqualifies children who have made some progress, but have not reached age-appropriate levels of functioning. We're very concerned this interpretation will cause a revolving door for children, who enter the system, make progress, exit the system, regress or fall behind, and then must re-enter the system. We strongly urge the Cabinet and Commission to review the language in this section, as we are very concerned that the costs of providing services will merely escalate when these children enter school further behind than they could have been with ongoing services."
- (b) Response: The Cabinet believes that the guidance, service coordination and instruction families receive while enrolled in the First Steps program will assist them after their children graduate from the program. We, at the CSHCN, celebrate the successes made by those First Steps children and target services to the children most in need, in part, due to the fiscal concerns of the Commonwealth. We also believe that changing the eligibility requirements for children already receiving services would be an equal rights violation. The regulation is not being amended as a result of this comment.
- (c) Comment: Mr. Dent and Ms. Murphy submitted comments stating that the administration is "addressing strictly the financial and administrative needs and forgetting the purpose of furthering the children into the future of our world by making them better people, being able to survive." Mr. Dent further comments that everything the administration is doing is cutting costs; however, going to an annual evaluation will add costs. He and Ms. Murphy also expressed concerns that continued eligibility will be tied to the annual evaluation results and that if a child progresses to the point that he is only delayed in one area by 1.5 standard deviations, his eligibility will be terminated.
- (d) Response: The Cabinet appreciates Mr. Dent's and Ms. Murphy's comments; however, we strongly disagree that we are strictly addressing the financial aspects of this program. Our main goal is to improve the quality of services and compliance with federal rules. Although the annual evaluation is now mandated as a result of Senate Bill 60, the administration supports the idea of an annual evaluation to determine on-going eligibility, but more importantly, to determine whether the children being provided services through the First Steps Program are making progress. While we agree that the annual evaluation process may result in increased costs initially, it will also provide the Cabinet with much needed data for federal reporting purposes as well as assisting the administration in determining whether the number of children receiving services until they "age out" at three (3) years of age continue to need the high number of services they receive. Due to the increase in numbers of children qualifying for First Steps services, it is the administration's responsibility to be fiscally prudent in how services are delivered. Due to the severe budget constraints that this program is

- experiencing, the available funding must be managed in a manner that allows children and families who need First Steps services the most, to get them. If the Commonwealth and this program cannot provide early intervention services within fiscal limitations, there is the possibility that no children will receive services. The regulation is not being amended as a result of this comment.
- (e) Comment: Mary Jo Campbell submitted a request for clarification regarding the discharge of a child as a result of an annual evaluation and how the annual evaluations will be phased in.
 - (f) Response: A child who is determined ineligible as a result of an annual evaluation shall be transitioned from First Steps in accordance with 911 KAR 2:140, Section 14. The annual evaluation will be phased in as IFSP annual reviews occur on or after October 1, 2003. The regulation is being amended as a result of the comment.
 - (g) Comment: Diana Pantalos submitted comments regarding the expense of the annual evaluation stating that “if one goal of the annual evaluation of each child is to save money spent on unnecessary services, then the cost of such evaluations should be studied. The expense in terms of not only professional time, but supportive staff time and the entire paper flow that goes with such a policy should be realistically estimated. What would each of these evaluations really cost? (Thought should be given to the family-friendliness of this process, for families already inundated with appointments and doctor visits). A less costly and more effective approach would be to strengthen the role of the primary service coordinator in enforcing reduction or discontinuation of services when it is clear from the IFSP that goals have been met. Additional training could be provided to help them in this role.”
 - (h) Response: We appreciate Ms. Pantalos’ suggestion and are in the process of re-evaluating the service coordination training to address this issue. Although one of the goals of the annual evaluation is to save money on unnecessary services, more importantly, it is to evaluate whether the services children are receiving in First Steps are effective in meeting their and their families’ needs as well as providing the administration with data regarding the quality of services our providers are delivering. The regulation is not being amended as a result of the comment.
 - (i) Comment: Martha Schofield submitted comments regarding the proposed addition of annual evaluations stating that she believes that this proposal is a band aid approach to dealing with concerns about potential or actual abuse under the current system and sees this as an unnecessary use of valuable resources, extra costs to the program, requires additional personnel and resources, as well as a being a burden to the families. In addition, she suggested that providers be required to attend mandatory annual or semi-annual trainings aimed at providing updates and reminders on program policies and changes. She added that the mandatory training requirement, coupled with the current audit process, would better meet the goal of preventing abuse within the program than the proposed requirement for an annual determination of eligibility.

- (j) Response: Although the annual evaluation is now mandated as a result of Senate Bill 60, the administration supports the idea of an annual evaluation to determine on-going eligibility, but more importantly, to determine whether the children being provided services through the First Steps Program are progressing as a result of those services. While we agree that the annual evaluation process may result in increased costs initially, it will also provide the Cabinet with much needed data for federal reporting purposes as well as assisting the administration in determining whether the number of children receiving services until they “age out” at three (3) years of age continue to need the high number of services they receive. We appreciate Ms. Schofield’s suggestion regarding the mandatory training of providers and are in the process of implementing this. The regulation is not being amended as a result of the comment.
 - (k) Comment: Ms. Schofield submitted a question regarding whether there is an appeal process if the family or IFSP team member disagrees with the results of the evaluation, how is the team notified and in what timeframe to ensure services are not provided past the discharge date.
 - (l) Response: Yes, there is a mediation process (see 911 KAR 2:180) and an appeals process (see 911 KAR 2:170). The evaluator is to submit the evaluation report within the timeframes established in this regulation prior to the annual IFSP team meeting so that all team members can discuss the report and prepare the family for transition from the program.
- (7) Subject Matter: Eligibility criteria
 - (a) Comment: Mr. Myers commented that it is inappropriate to require total scores in the communication and physical development areas to be significantly delayed and believes it is unfortunate that those two areas are not allowed to be looked at individually.
 - (b) Response: We believe that the eligibility criteria are appropriate and consistent with those of Part B of IDEA, which authorizes the provision of special services to children with disabilities ages 3 to 21. We also believe it would be inappropriate to label a child as developmentally delayed unless the total area indicated a significant delay. In addition, we believe the instruments being used for evaluation purposes are designed to evaluate the total area, not just sub-areas. The regulation is not being amended as a result of this comment.
 - (c) Comment: Marsha Schofield submitted a suggestion to include “growth” in the skill area of physical development so that it states “Total physical development including vision, hearing and growth”.
 - (d) Response: We appreciate Ms. Schofield’s suggestions and will amend the regulation accordingly.
- (8) Subject Matter: IFSP team members
 - (a) Comment: Mr. Myers submitted comments that the regulation does not include the primary level evaluator as a member of the initial IFSP team.

- (b) Response: Section 1(6)(a) of the regulation describes who must be a part of the initial IFSP team. It does not prohibit the primary level evaluator from being a member. The regulation is not being amended as a result of this comment.
 - (c) Comment: Ms. Milburn request clarification regarding Section 1(6)4. and 5. which states who shall be on the IFSP team. Specifically she asks whether a therapist and a therapy assistant will be reimbursed for a collateral service to attend the IFSP team if both are invited.
 - (d) Response: If the IFSP team determines that both are needed to meet the needs of the family and child, (e.g. the therapist provided the assessment and the therapy assistant is providing the therapeutic intervention, etc.) it would be appropriate for both to be on the IFSP team and reimbursed for a collateral service. The regulation is not being amended as a result of this comment.
- (9) Subject Matter: Intensive Level Evaluation
- (a) Comment: Marsha Schofield submitted a question as to whether the family is able to choose the Intensive Level Evaluation developmental professional representing each discipline that is represented on the IFSP team.
 - (b) Response: The developmental professional that participates on the Intensive Level Evaluation team is generally an employee or contractor of the agency or university that is contracted to provide this service; therefore, the family does not choose this individual; however, the family does choose which Intensive Level team they wish to use.

Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

Page 3
Section 1(4)(c)
Line 17

After “provide a”, insert “standard deviation”.

Page 4
Section 1(4)(f)
Lines 17 and 18

Delete Section 1(4)(f) in its entirety.

Section 1(5)(a)
Line 22

After “the”, delete “team”
In lieu thereof, insert “service coordinator”.

Page 5
Section 1(5)(a)c.
Line 9

After “(c)”, insert the following:
If the current provider does not want to participate..
After “provider”, delete “of the same discipline”.

Line 10

After “provider”, insert the following:
if assessing the area being treated by the current provider.

Section 1(5)(b)

Line 11

After “(b)”, delete “If the child”.
In lieu thereof, insert the following
1. If the child does not have an established risk condition identified in
Section 2(1)(c) of this administrative regulation, and.

Line 12

After “as”, insert “Medicaid,”.
After “EPSDT,”, insert the following:
The Department for Public Health’s and the.

Line 13

After “payors.”, insert the following:
2. If the child has an established risk condition, and the developmental
evaluation:
a. Does not indicate a developmental delay in at least one skill area, the
family shall receive service coordination services until the earlier of:
(i) An annual developmental evaluation is performed in accordance with
subsection (8)(d) of this administrative regulation; or
(ii) The family has a concern or suspects that the child may have a delay
present that was not revealed by the testing.
b. If the situation described in clause (ii) of this subparagraph occurs, the
procedure established in Section 2(1)(d)3. of this administrative regulation
shall be followed.

Section 1(6)(a)

Line 15

After “members”, insert “at a minimum”.

Section 1(6)(a)1.

Line 16

After “child;”, insert the following:
2. Other family members, as requested by the parent, if feasible to do so;
3. An advocate or person outside of the family, if the family requests that
the person participate;

Lines 17 through 20

Renumber subparagraphs 2. through 4. as 4. through 6. accordingly.

Section 1(6)(a)5.

Line 20

Delete "5".

In lieu thereof, insert "7. If appropriate".

Lines 20 and 21

Delete "provide therapeutic intervention".

In lieu thereof, insert the following:

services to the child or family.

Page 6

Section 1(7)(f)

Line 19

After "IFSP", insert the following:

This shall include identifying:

1. The discipline;

2. The professional, paraprofessional, or both;

3. The method in which services shall be delivered, such as individual, group, or both; and

4. The payor source for the service.

Section 1(8)(a)

Line 23

After "(8)", delete "(a)".

After "eligibility", delete the comma.

In lieu thereof, insert a colon.

Page 7

Section 1(8)(a)

Lines 1 through 5

Delete lines 1 through 5 in their entirety.

In lieu thereof, insert the following:

(a) A developmental evaluation shall be performed on an annual basis no earlier than ninety (90) days nor later than (60) days before the annual IFSP expiration date; and

(b) An updated medical evaluation shall be obtained from the child's physician or nurse practitioner in accordance with subsection (4)(e)1.c. of this Section.

Section 1(8)(b)

Line 6

Delete "(b)".

In lieu thereof, insert "(c)".

After "annual", insert "developmental".

Section 1(8)(c)

Line 10

Delete “(c)”.

In lieu thereof, insert “(d)”.

After “results of the”, insert “annual”.

Line 11

After “2(1)(d)”, insert “or (f)”.

After “regulation”, delete the rest of this paragraph in its entirety.

In lieu thereof, insert the following:

within three (3) days or receiving the written evaluation report, the service coordinator shall:

1. Notify the service provider that the child and family are no longer eligible for First Steps services; therefore, therapeutic intervention shall cease;

2. Facilitate a transition conference in accordance with 911 KAR 2:140, Section 14; and

3. Subsequent to the transition conference, discharge the child from the program.

Page 8

Section 1(9)(b)1.e.

Lines 14 and 15

After “progress:”, delete “and f.”

In lieu thereof, insert the following:

f. Therapeutic staff notes from the previous two (2) months; and
g.

Section 1(9)(b)2.

Line 17

After “coordinator”, delete “or primary evaluator”.

Page 9

Section 1(9)(c)2.a.(ii)

Line 6

After “Determine”, delete “that”.

In lieu thereof, insert “if”.

Section 1(9)(c)2.a.(iii)

Line 10

After “or”, insert the following:

(iv) Refer the family to local community resources; and

(v) Provide the IFSP team with recommendations for service planning; or

Page 10

Section 1(9)(d)5.b.

Line 12

After “concerns”, delete “expresses”.

In lieu thereof, insert “expressed”.

Page 11

Section 1(11)(a)

Line 7

After “A”, delete the following:

A written report shall be completed.

In lieu thereof, insert the following:

Report shall be written.

Page 13

Section 1(11)(a)17.

Line 2

After “17.”, delete “Documentation”.

In lieu thereof, insert “A statement”.

Page 14

Section 2(1)(c)3.

Line 16

After “including”, insert “growth”.

Page 15

Section 2(1)(d)3.a.

Delete “requested”.

In lieu thereof, insert “administered”.

Page 24

Section 4

Line 19

After “after”, delete “September 1, 2003”.

In lieu thereof, insert “January 1, 2004”.